

NO. 14-18-00302-CR

IN THE FOURTEENTH COURT OF APPEALS
AT HOUSTON, TEXAS

FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS
6/12/2018 7:50:27 PM
CHRISTOPHER A. PRINE
Clerk

DUKE EDWARD,
Appellant,

vs.

THE STATE OF TEXAS,
Appellee.

ON APPEAL FROM
212TH JUDICIAL DISTRICT COURT OF GALVESTON COUNTY, TEXAS,
TRIAL COURT CAUSE NO. 17-CR-1965

**ATTORNEY DAVID A. BRESTON'S
MOTION TO WITHDRAW AS
NOTED COUNSEL OF RECORD**

TO THE HONORABLE JUDGES OF THE
FOURTEENTH COURT OF APPEALS:

COMES NOW David A. Breston, counsel of record in the trial court for the motion for new trial proceeding now pending in that court, and erroneously listed as noted counsel of record for the Appellant, Duke Edward, in this Court, and respectfully moves this Honorable Court to grant him leave to withdraw as noted counsel of record for the Appellant.

- (1) There is no currently pending deadline for filing the Appellant's brief in

this matter.

(2) Appellant was charged by indictment with the felony offense of assault on a family/household member with a previous conviction under Section 22.01(b)(2)(A) of the Texas Penal Code, which was alleged to have occurred on July 9, 2017, in Galveston County, Texas.

(3) A jury in the 212th District Court of Galveston County, Texas, the Honorable Patricia Grady, presiding, found Appellant guilty as charged in the indictment, and assessed punishment at sixty (60) years confinement in the penitentiary on April 5, 2018.

(4) Appellant was represented at trial by attorney Calvin Parks.

(5) Appellant gave timely notice of appeal of the judgment and sentence on April 5, 2018, and attorney James Ducote was appointed to him represent on appeal.

(6) Mr. Ducote filed a motion for new trial not supported by affidavit in this matter on April 12, 2018.

(7) The undersigned counsel entered a limited notice of appearance in the trial court with respect to prosecuting the motion for new trial proceeding. *See Attachment A* (“...David A. Breston, and hereby gives this notice of appearance of counsel of record for the Defendant, Duke Edward, in the *motion for new trial proceeding* now pending before the Court.”) (Emphasis Supplied).

(8) The undersigned counsel filed an amended motion for new trial in the trial court in this matter on May 2, 2018, and that amended motion is currently under

review by the trial court.

(9) The undersigned counsel's scope of representation in this matter is limited to the motion for new trial proceeding now pending in the trial court.

(10) The undersigned counsel will not be representing the Appellant on appeal before this Court.

(11) The granting of this Motion to Withdraw will not jeopardize the rights of the Appellant.

(12) The requested withdrawal is not for the purposes of delay, but to correct the undersigned's having erroneously noted as counsel of record in this appeal.

(13) Appellant will have ample opportunity to employ new counsel, represent himself or request court appointed counsel in the event the motion for new trial is granted and he is granted a new punishment hearing, or if the motion is denied and he must proceed with this appeal.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the undersigned prays that this Honorable Court will, in all things, **GRANT** this motion, and grant the undersigned leave to withdraw as counsel of record for the Appellant, and to further relieve the undersigned of any future professional obligation, responsibility or duty to the Appellant in the appeal now pending before this Court styled *Duke Edward v. The State*

of Texas, Appeal No. 14-18-00302-CR, and that the Court further **GRANT** any additional relief to which the undersigned may be justly entitled.

DATED this 12th day of June, 2018.

Respectfully Submitted,

/s/ **David A. Breston**

David A. Breston
State Bar No. 90001478
Law Office of David A. Breston
405 Main Street, Suite 1050
Houston, Texas 77002
PH: (713) 9224-4040

COUNSEL OF RECORD ON MOTION FOR NEW TRIAL
FOR THE DEFENDANT DUKE EDWARD

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June, 2018, I electronically filed the above and foregoing with the District Clerk using the electronic case filing system. The electronic case filing system sent a Notice of Electronic Filing to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means, and the above and foregoing was further provided to the Appellant, Duke Edward, at his last known address on the 12th day of June, 2018, as follows:

Duke Edward
TDC# 02195605
TDC Byrd Unit
21 FM 247
Huntsville, Texas 77320

:

/s/ **David A. Breston**

David A. Breston
State Bar No. 90001478

COUNSEL OF RECORD ON MOTION FOR NEW TRIAL
FOR THE DEFENDANT DUKE EDWARD

ATTACHMENT A

CAUSE NO. 17-DCR-1965

THE STATE OF TEXAS,	*	IN THE DISTRICT COURT OF
	*	
vs.	*	GALVESTON COUNTY, TEXAS
	*	
DUKE EDWARD.	*	212 th JUDICIAL DISTRICT

**DEFENDANT DUKE EDWARD'S
NOTICE OF APPEARANCE, AND
SUBSTITUTION OF COUNSEL**

TO THE HONORABLE PATRICIA GRADY, DISTRICT JUDGE:

COMES NOW David A. Breston, and hereby gives this notice of appearance of counsel of record for the Defendant, Duke Edward, in the motion for new trial proceeding now pending before the Court. The undersigned states that this substitution of counsel will not unreasonably delay or impede any aspect of this cause.

By his electronic signature below, the Defendant agrees to substitute David A. Breston as his counsel of record and to relieve present counsel, James Ducote, Esq., of all future obligations and responsibilities in this matter.

/s/ **Duke Edward**

Duke Edward

DATED this 19th day of April, 2018.

up to court

Respectfully Submitted,

/s/ **David A. Breston**

David A. Breston
SBT No. 90001478
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405 Main Street, Suite 1050
Houston, Texas 77002
PH: (713) 9224-4040

**COUNSEL OF RECORD FOR THE DEFENDANT
DUKE EDWARD**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been duly served upon counsel representing the State of Texas in this matter by either Hand Delivery, Prepaid United States Mail, E-mail, or through this Court's Electronic Filing System on this 19th day of April, 2018

:

/s/ **David A. Breston**

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405 Main Street, Suite 1050
Houston, Texas 77002
PH: (713) 9224-4040

**COUNSEL OF RECORD FOR THE DEFENDANT
DUKE EDWARD**